

STANDARD APPLICATION

Harford County Board of Appeals

Bel Air, Maryland 21014

JUL - 6 2007

Case No. 5613Date Filed 7/2/07

Hearing Date _____

Receipt _____

Fee \$400.00

Shaded Areas for Office Use Only

Type of Application

Nature of Request and Section(s) of Code _____

☐ Administrative Decision/Interpretation

CASE 5613 MAP 49 TYPE Special Exception

☐ Special Exception

ELECTION DISTRICT 03 LOCATION NE S Macphail Road, Bel Air

☐ Use Variance

BY The Maryland Country Club Incorporated, 1338 E. Macphail Road, Bel Air 21014

☐ Change/Extension of Non-Conforming Use

Appealed because a modification of a special exception granted by Board of Appeals

☐ Minor Area Variance

Case #4962 to permit the subdivision of the parcel into 3 residential lots requires

☐ Area Variance

approval by the Board.

☐ Variance from Requirements of the Code☐ Zoning Map/Drafting Correction☒ Modification of Special Exception Approval

NOTE: A pre-conference is required for property within the NRD/Critical Area or requests for an Integrated Community Shopping Center, a Planned Residential Development, mobile home park and Special Exceptions.

Applicant/Owner (please print or type)

Name The Maryland Country Club IncorporatedPhone Number call attorneyAddress 1338 E. Macphail Road

Bel Air

MD

21014

Street Number

Street

City

State

Zip Code

Co-Applicant _____

Phone Number _____

Address _____

Street Number

Street

City

State

Zip Code

Contract Purchaser James E. Welch / David E. CareyPhone Number call attorneyAddress 1356 E. Macphail Road

Bel Air

MD

21014

Street Number

Street

City

State

Zip Code

Attorney/Representative David E. CareyPhone Number 410-838-5500Address 200 S. Main Street

Bel Air

MD

21014

Street Number

Street

City

State

Zip Code

Land Description

Address and Location of Property Lot 3.915 ac, N.E. S. Macphail Road, S. of Bel Air

Subdivision N.A. Lot Number N.A.

Acreage/Lot Size 3.915 ac Election District 3 Zoning R1

Tax Map No. 49 Grid No. 3F Parcel 208 Water/Sewer: Private Public

List ALL structures on property and current use: 3 fenced tennis courts, public sewer, private water

Estimated time required to present case: 20 minutes

If this Appeal is in reference to a Building Permit, state number

Would approval of this petition violate the covenants and restrictions for your property? No

Is this property located within the County's Chesapeake Bay Critical Area? Yes No X

If so, what is the Critical Area Land Use designations:

Is this request the result of a zoning enforcement investigation? Yes No X

Is this request within one (1) mile of any incorporated town limits? Yes X No

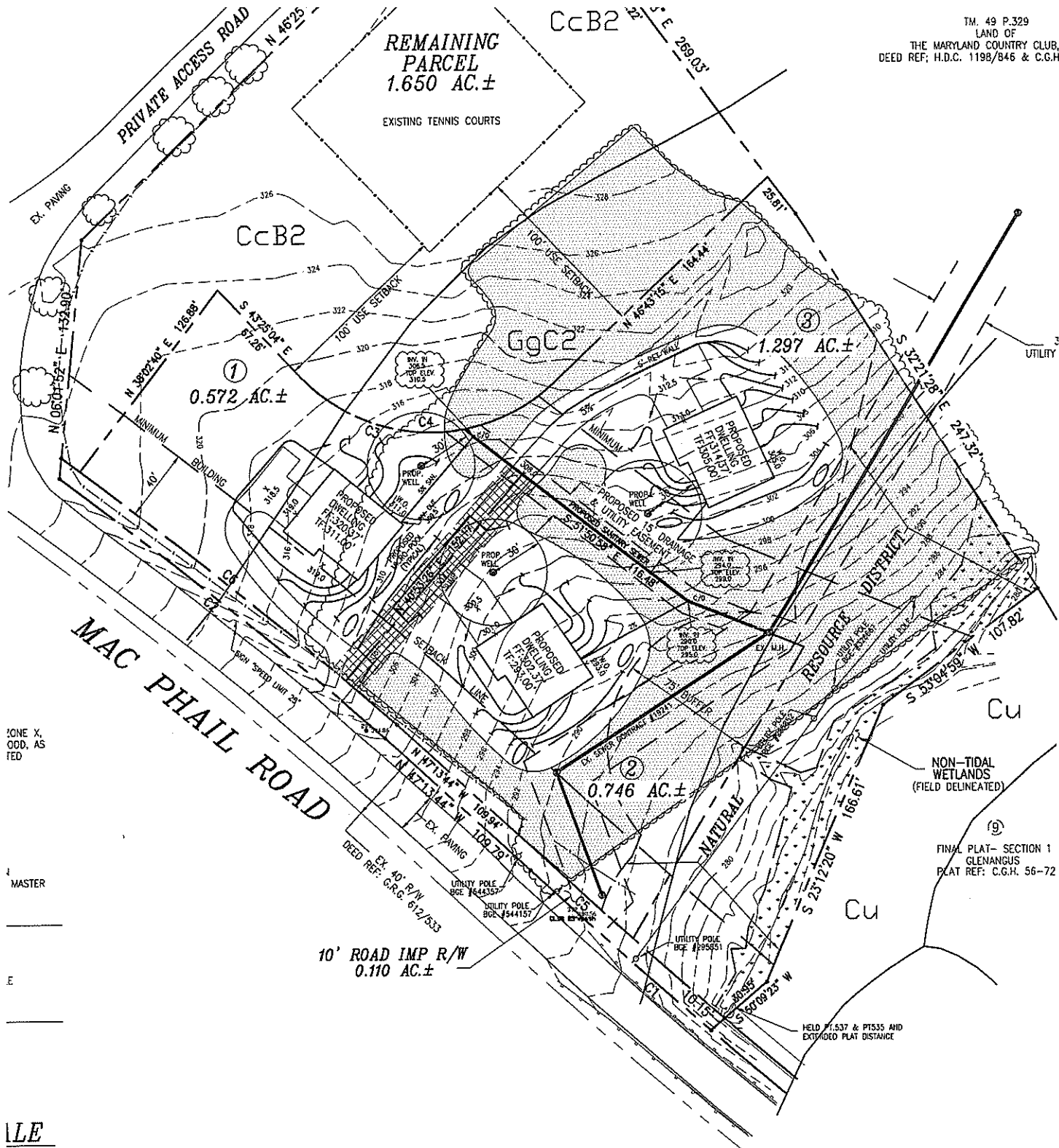
Request

Modification of the special exception approval in Case No. 4962 to permit subdivision of
above parcel into 3 residential lots with remaining lands, including tennis courts, to
remain as part of the existing country club,
Rd.

Justification

The property is zoned R1 and the proposed subdivision otherwise complies with the Code.
The operating of the country club will not be affected. The properties adjoining the subject
parcel are either owned by applicant or contract purchaser, except for those across Macphail
Rd.

If additional space is needed, attach sheet to application. In answering the above questions, please refer to the Requirements that pertain to the type of approval request. (Special Exception, Variance, Critical Area or Natural Resource District (NRD) Variance, etc.)



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DATE	_____
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DATE	_____
DATE	_____
DATE	_____

THE OWNER HEREBY GRANTS TO HARFORD COUNTY, MARYLAND, AN EASEMENT FOR THE CONSTRUCTION, MAINTENANCE, REPAIR AND REPLACEMENT OF WATER, SEWER AND STORM DRAINAGE LINES WITHIN THE DRAINAGE AND UTILITY EASEMENTS AND ROAD IMPROVEMENT RIGHTS-OF-WAY AS SHOWN ON THE PLAT.

UNLESS OTHERWISE PROVIDED ON THIS PLAT, THE STREETS, ROADS, OPEN SPACES AND PUBLIC SITES SHOWN HEREON, AND MENTION THEREOF IN DEEDS ARE FOR THE PURPOSE OF DESCRIPTION ONLY AND THE SAME ARE NOT INTENDED TO BE DEDICATED TO PUBLIC USE; THE FEE SIMPLE TITLE TO THE LAND SO SHOWN IS EXPRESSLY RESERVED TO THE PRESENT OWNER(S) SHOWN ON THIS PLAT, THEIR SUCCESSORS, HEIRS AND ASSIGNS. NOTHING CONTAINED HEREIN SHALL PRECLUDE THE OWNER FROM CONVEYING BY DEED THE STREETS, ROADS, OPEN SPACES AND PUBLIC SITES IN FEE TO HARFORD COUNTY, MARYLAND.

NO LOT WILL BE RE-SUBDIVIDED TO PRODUCE A BUILDING SITE OF LESS AREA OR WIDTH THAN THE MINIMUM REQUIRED BY SUBDIVISION REGULATIONS OR THE COUNTY HEALTH OFFICER. (COUNCIL BILL 84-20, EFFECTIVE MAY 18, 1984)

OWNER:

DATE

Rec'd for Record
at _____ o'clock
day recorded in Liber _____
No. _____ Folio _____
Records of Harford

BOARD OF APPEALS CASE NO. 4962

*

BEFORE THE

APPLICANT: Maryland Country Club, Inc.

*

ZONING HEARING EXAMINER

REQUEST: Modification of Case No. 4708
and variance to reduce minimum building
or use setback; 1335 E. MacPhail Road,
Bel Air

*

OF HARFORD COUNTY

*

Hearing Advertised

*

Aegis: 8/25/99 & 9/1/99

HEARING DATE: October 13, 1999

*

Record: 8/27/99 & 9/3/99

* * * * *

ZONING HEARING EXAMINER'S DECISION

The Maryland Country Club, Inc., (hereinafter the "Applicant" or the "Club"), appeared before the Hearing Examiner requesting Board of Appeals approval to:

1. Modify the special exception approval for a golf/country club and accessory uses granted in Board of Appeals Case No. 4708 pursuant to Sections 267-52(B) and (C) of the Harford County Zoning Code, located in the AG, Agricultural, R1 and R3 Residential Districts to relocate the existing accessory golf driving range/practice facility and develop a portion of the Club's property with single family residential dwellings as shown on the attached site plan.
2. Modify the site plan approved in Board of Appeals Case No. 4708 pursuant to Sections 267-52(B) and (C) of the Code, to include the relocated practice facility and to delete the portion of the Club's property to be developed with single family detached dwellings.
3. Obtain a variance pursuant to Section 267-11 of the Code from the provisions of Section 267-36(B) Table IV to permit the Club as modified to be operated with a minimum building or use setback of less than one hundred (100) feet from an adjacent residential lot (0 feet proposed).

The subject property is designated among the records of the State Department of Assessments and Taxation as Map 49, Grid 3E, Parcel 329; Map 49, Grid 3E, Parcel 731; Map 49, Grid 3F, Parcel 715; Map 49, Grid 3F, Parcel 208; Map 49, Grid 3E, Parcel 184; Map 50, Grid 2A, Parcel 57; and is zoned AG, Agricultural, and R-1 and R-3 Urban Residential.

Case No. 4962 - Maryland Country Club, Inc.

William E. Hughes, the General Manager of the Club testified that the Club had been originally built in the early 1960's and that over the years thirteen (13) separate parcels comprising approximately 190 acres had been acquired by the Club for its use. He explained that the Club consists of an 18 hole golf course, pool, tennis courts, golf practice facility and a clubhouse.

Mr. Hughes testified that the Club was requesting approval to modify the existing special exception granted to the Club in Case 4708 by changing the boundaries of the Club and adding a new practice facility ("New Facility"). He explained that the Club and 1022 South Fountain Green Road LLC, ("LLC") a limited liability company controlled by William Maloney, had entered into an agreement whereby the Club will convey approximately 5 acres of the Club's property adjoining the 18th fairway where the Club's current practice facility ("Current Facility") is located to the LLC to be used for residential building lots. In return, the LLC will convey approximately 13 acres of the LLC's property to the Club to be used as the site of the New Facility. Mr. Hughes noted that the New Facility would be operated in the same manner as the Current Facility, i.e., open only to members and their guests during daylight hours with no lighting proposed. He testified that the Current Facility does not meet the needs of the Club.

The witness stated that he was aware that portions of the New Facility and the new boundaries of the Club created by the conveyance of the 5 acres to the LLC were less than 100 feet from the lots to be developed by the LLC, and that accordingly, a variance from the Code was required. Mr. Hughes testified that Mr. Maloney advised him that the LLC had no objection to the requested variance.

Mr. Hughes said that based on information he received from Morris & Ritchie Associates, Inc., ("MRA") the Club's engineers, it was his understanding that the New Facility could not be redesigned or relocated such that the setback variances were not required and still meet the needs of the Club. Mr. Hughes said that, accordingly, denial of the requested variance would cause practical difficulty to the Applicant in that without it, the Club's request could not be granted.

Case No. 4962 - Maryland Country Club, Inc.

Mr. Hughes went on to say that granting the requested relief would not harm anyone in any way. Adequate landscaping will be provided along the boundaries of the New Facility and the 18th fairway to prevent golf balls from going on to adjoining properties. All setback requirements for existing homes in the area will be maintained. Mr. Hughes pointed out that residential lots have directly adjoined other areas of the Club's golf course for many years. He stated that no complaints about golf operations have been received from those lot owners.

Mr. Hughes testified that the conditions of approval recommended in the Department of Planning and Zoning's Staff Report issued in the case were acceptable to the Applicant.

Frank F. Hertsch, an expert civil engineer and site plan designer employed by MRA also testified. Mr. Hertsch explained that MRA prepared the site plan for the Club and the land of the LLC, which is to be developed as a residential subdivision to be known as Stone Ridge.

Mr. Hertsch said that the site of the New Facility is currently farmed. He testified that a berm and landscaping with mature trees is proposed around portions of the New Facility to prevent golf balls from entering onto adjacent properties. The witness pointed out that there is a 35-40 foot difference in elevation which will also help prevent golf balls from reaching adjoining properties. He explained that the requested setback variance is required only for homes to be built in Stone Ridge. No variance for any existing home will be required. The required 100 foot setback is maintained from the adjoining Woodland Greens subdivision. He noted that a 50 foot open space area will be maintained at the rear of the New Facility which will be landscaped. He pointed out that a large portion of the New Facility borders a Forest Retention Area which, although zoned R-1, will not be developed. He also testified that some of the existing trees located between the Current Facility and the Stone Ridge development will be maintained and new understory trees planted to prevent golf balls from entering onto the Stone Ridge property from the Club's new boundary along the 18th fairway.

Mr. Hertsch testified that it was not possible to redesign or relocate the New Facility without the requested variance. He noted that wetlands located on the LLC property prevented the New Facility from being located elsewhere and that a smaller practice facility would not meet the Club's needs. Since the New Facility should be located in close proximity to the clubhouse, there is no other feasible location.

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Mr. Hertsch testified that there was no reason from an engineering or zoning standpoint to prevent the Applicant from developing the property as proposed. He noted that residential lots which adjoin a golf course are very desirable and sought by homeowners. He indicated that the design, proposed screening plan and location of the New Facility will prevent use of the New Facility from being objectionable to adjoining property owners.

The Department of Planning and Zoning's Staff Report recommended conditional approval of the Applicant's request.

No protestants appeared in opposition to the Applicant's request.

CONCLUSION:

Section 267-36(B) Table IV Design Requirements for Specific Uses in the R1 District requires a minimum building or use setback from an adjacent residential lot of 100 feet.

Section 267-52(B) and (C) provide that:

- B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.

The Code, pursuant to Section 267-11, authorizes the granting of variances provided the Board finds that (1) by reason of the uniqueness of the property or topographical conditions literal enforcement of Part 1 will result in practical difficulty or unreasonable hardship; and (2) the variance will not be substantially detrimental to adjacent properties and will not materially impair the purposes of this Part 1 or the public interest.

The concept of uniqueness in variance cases was discussed by the Court of Special Appeals in the case of North v. St. Mary's County, 99 Md. App. 502, 638 A.2d 1175 (1994) wherein the court stated:

Case No. 4962 - Maryland Country Club, Inc.

"In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls.

An example of uniqueness is found in the use variance case of Frankel v. Mayor and City Council, 223 Md. 97, 104 (1960), where the court noted: "He met the burden; the irregularity of the...lot...that it was located on a corner of an arterial highway and another street, that it is bounded on two sides...by parking lots and public...institutions, that immediately to its south are the row houses..."

Based on the testimony presented and the Staff Report, the Hearing Examiner finds that the request to modify the existing approved special exception for the Club as described by the Applicant's witnesses would not adversely affect the public health, safety and general welfare, nor would it result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. All applicable Code requirements, with the exception of the requested variance, are met. The use of the Club will remain essentially unchanged if the Applicant's request is approved. With the implementation of the berm and landscaping, the Club, as modified, can be conducted without adverse impact to adjoining property owners.

Based on the testimony provided by the Applicant and the evidence contained in the Staff Report, the Hearing Examiner finds that the subject property is unique, given its unusual configuration, its numerous component parcels, together with the topography in the area of the New Facility and the presence of non tidal wetlands on the subject property. No variances are required for existing adjoining residences. The proposed lots in Stone Ridge which will be located less than 100 feet from the Club as modified have not yet been created. Any owner of such a lot will buy his or her lot with knowledge of the modifications to the Club proposed by the Applicant.

Case No. 4962 - Maryland Country Club, Inc.

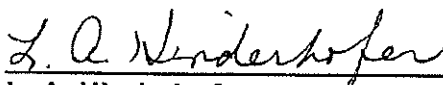
The Hearing Examiner finds that based on the evidence, granting the requested setback variances would not adversely affect adjoining property owners or the public interest. The proposed landscaping plan will ensure that the requested variance will have little or no impact on the surrounding neighborhoods or the intent of the Code. The Club has been operated with residential lots adjoining it for many years without complaint.

Furthermore, the evidence showed that the new lots could not be created from the Current Facility nor could the New Facility be redesigned or relocated and still meet the needs of the Club without the requested variance. Thus, the Hearing Examiner finds that denial of the variance would result in practical difficulty to the Applicant.

Based on the evidence, it is the recommendation of the Hearing Examiner that the Applicant's request to modify the approved special exception as shown on the site plan be approved, including the requested variance, subject to the following conditions:

1. The Applicant shall submit detailed site plans for the construction and layout of the driving range, berm and landscaping in both the driving range area and the area adjacent to the eighteenth hole.
2. The Applicant shall obtain all necessary State and County permits for the grading and construction of the driving range, and the berm to buffer the use from the residential uses.

Date OCTOBER 22, 1999



L. A. Hinderhofer
Zoning Hearing Examiner

DAVID R. CRAIG
HARFORD COUNTY EXECUTIVE

LORRAINE COSTELLO
DIRECTOR OF ADMINISTRATION



C. PETE GUTWALD
DIRECTOR OF PLANNING & ZONING

HARFORD COUNTY GOVERNMENT

Department of Planning and Zoning

July 20, 2007

STAFF REPORT

BOARD OF APPEALS CASE NO. 5613

APPLICANT/OWNER: The Maryland Country Club Incorporated
1338 East MacPhail Road, Bel Air, Maryland 21014

CONTRACT PURCHASER: James E. Welch/David E. Carey
1356 East MacPhail Road, Bel Air, Maryland 21014

REPRESENTATIVE: David E. Carey
200 South Main Street, Bel Air, Maryland 21014

LOCATION: Northeast side of MacPhail Road just to the southeast of the
entrance to the Maryland Golf and Country Club
Tax Map: 49 / Grid: 3F / Parcel: 208
Election District: Three (3)

ACREAGE: 3.915 acres

ZONING: R1/Urban Residential District

DATE FILED: July 2, 2007

HEARING DATE: September 19, 2007

APPLICANT'S REQUEST and JUSTIFICATION:

Request:

"Modification of the Special Exception approval in Case No. 4962 to permit subdivision of above parcel into 3 residential lots with remaining lands, including tennis courts, to remain as part of the existing Country Club."

Preserving Harford's past; promoting Harford's future

STAFF REPORT

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The Maryland Country Club Incorporated

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Justification:

"The property is zoned R1 and the proposed subdivision otherwise complies with the Code. The operation of the Country Club will not be affected. The properties adjoining the subject parcel are either owned by Applicant or contract purchaser, except for those across MacPhail Road."

CODE REQUIREMENTS:

The Applicant is requesting a modification of a special exception granted by the Board of Appeals in Case 4962 to permit the subdivision of the parcel into three (3) residential lots in the R1/Urban Residential District.

LAND USE and ZONING ANALYSIS:

Land Use – Master Plan:

The subject property is located southeast of Bel Air, on the east side of MacPhail Road at the entrance to the Maryland Golf and Country Club. Location maps and a copy of the Applicant's site plan are enclosed with the report (Attachments 1, 2 and 3).

The subject property is located within the Development Envelope. The predominant land use designations in this area are Low and Medium Intensities. The Natural Features Map reflects Stream Systems. The subject property is designated as Low Intensity which is defined by the 2004 Master Plan as:

Low Intensity – Areas within the Development Envelope where residential development is the primary land use. Density ranges from 1.0 to 3.5 dwelling units per acre. Neighborhood commercial uses such as convenience stores, doctors' offices, and banks are example of some of the nonresidential uses associated with this designation.

Enclosed with the report are copies of the Greater Bel Air Community Area Map, the Land Use Map and the Natural Features Map (Attachments 4, 5 and 6).

Land Use – Existing:

The predominant land use in this area is residential including single family dwellings, townhouses and condominiums. The area also contains farm land and large areas of dense woodland. The topography of the area ranges from rolling to steep especially near and around the stream valleys. Enclosed with the report is a copy of the aerial photograph and topography map (Attachments 7 and 8).

The area of the property to be subdivided is irregular in shape with frontage on the east side of MacPhail Road just south of the entrance to the Country Club. The property is a mix of open

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area and woodland with topography that ranges from rolling to steep. The south end of the property contains a stream along with an area of Natural Resource District. The Applicant proposes to subdivide the site into 3 lots. Enclosed with the report are site photographs along with an enlargement of the aerial photograph (Attachments 9 and 10).

Zoning:

The zoning classifications in the area are consistent with the 2004 Master Plan as well as the existing land uses. The primary zoning classifications within this area are R1 and R2/Urban Residential Districts. There are areas of RR/Rural Residential and AG/Agricultural. The subject site is zoned AG/Agricultural, R1 and R3/Urban Residential. The area that is the subject of this request is zoned R1/Urban Residential District. Enclosed with the report is copy of the zoning map (Attachment 11).

Zoning History:

The overall Maryland Golf and Country Club site was reviewed in Board of Appeals Case No. 4708, where the Applicant requested approval for a special exception and variances and to expand the existing clubhouse (Case 4708 - Attachment 12). Case 4962 modified case 4708 allowing the relocation of the golf driving range and development of the original driving range area as single family residential lots (case 4962 - Attachment 13).

SUMMARY:

The Applicant is requesting a modification of a special exception granted by the Board of Appeals in Case 4962 to permit the subdivision of the parcel into three (3) residential lots in the R1/Urban Residential District.

The request is to release this portion of the overall holdings of the country club from the area covered by the special exception. The operation of the country club will not be affected by the modification. The overall acreage of the parcel is 4.375 acres. After the lots are created there will be 1.650 acres that will remain with the holdings of the Country Club. The site plan presently shows all three lots having access onto MacPhail Road from the panhandle area back to lot three. The lots will be served by private wells and public sewer service. While the property is part of the overall holdings of Maryland Golf and Country Club there are no facilities currently developed on this area.

The Department of Public Works visited the site and found that the driveway location as proposed may create a safety issue. There is an over vertical/horizontal curve due west of the proposed driveway location. Driveways, especially on a major collector roadway, need to have intersection sight distance, measured at 5mph above the posted speed limit (the posted speed limit is 30 mph), prior to location approval. The measured sight distance looking right from the driveway location is only 320 feet and the required distance is a minimum of 390 feet. However, the majority of the traffic in this area is exceeding 35 mph, so the criteria for 40 mph speeds is

STAFF REPORT

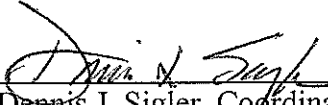
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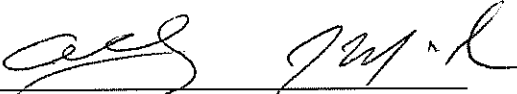
recommended, which would be 445 feet looking right and 430 feet looking left. Due to the location of the NRD area on the site it does not appear that the driveways could be moved to the eastern most property line. Since it is unlikely the developer could attain the required sight distance without major road reconstruction, we would suggest connecting the driveway to the access road to the Country Club to maximize the safety for the residents.

RECOMMENDATION and or SUGGESTED CONDITIONS:

The Department of Planning and Zoning recommends that the request be approved subject to the following conditions:

1. The Applicant shall submit a preliminary plan to the County for review and approval.
2. The Applicant shall submit a final plat for review and recordation in the County Land Records.
3. The lots shall not have direct access to MacPhail Road.
4. The driveway for the lots shall be connected to the existing entrance to the Country Club. An Access easement for the lots shall be submitted to the County for approval and recordation with the final plat.
5. The lots shall meet all County and State requirements.


Dennis J. Sigler, Coordinator
Zoning & Board of Appeals Review


Anthony S. McClune, AICP
Deputy Director, Planning and Zoning

DJS/ASM/jf